President : Of course, it is a matter left to the discretion of the House., Mr. Narayana Aiyar's motion ought not to take more than half an hour.

The question that discussion on Bunchy Top Disease might take place after the Chitties Bill was over, was put and carried.

Official Legislative Business.

THE TRAVANCORE CHITTIES BILL.

Mr. N. Ramakrishna Pillai (*Legal Remembrancer to Government*) : I beg to move that the consideration of the Travancore Chitties Bill be continued.

Mr. S. Narayana Aiyar (*Financial Secretary to Government*) : I second it.

Clauses 1 and 2.

The question that Clauses 1 and 2 do stand part of the Bill was put and carried.

Clauses 1 and 2 were added to the Bill.

Clause 3.

Mr. V. N. Padmanabha Pillai : I beg to move :

"In clause 3, sub-clause (2), add the following two paragraphs as part of the definition of "Chitty":— "For a transaction to amount of a chitty it is not necessary that each subscriber should subscribe the same amount ; it may vary according as he takes a full, a fractional, or a multiple ticket. In the case of a joint foremen it is not necessary that each of them should be a subscriber individually ; they may subscribe jointly also. For a transaction to amount to a chitty the prize amount that a subscriber is entitled to get must be the "prize amount" as defined in clause (9) of this Section and must be proportional to the ticket that he holds;"

and omit the explanation now existing in sub-clause (2).

Sir, I need not invite the attention of the House to the necessity of having a correct definition of the term 'Chitty' in a Bill relating to chitties. If there are defects or loopholes in the definition, such that transactions which are intended by the Legislature to fall within the definition fall outside the definition or vice versa the consequences are serious particularly in view of Clauses 4 and a which provide that transactions partaking of the nature of a Chitty but not falling within the definition of clause 2 of Section 3 are void and that any person who conducts or is responsible for the conduct of any such transaction shall be punishable with imprisonment and fine. My respectful submission is that there are such defects and loopholes in this definition so that transactions which are of almost daily occurrence and which are supposed to be equitable and honest transactions fall outside the definition, and transactions which are mischievous and intended to over reach people fall

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within the definition and receive the protection of the Act, I shall substantiate my position. The definition of a Chitty is this: A "chitty" means a transaction by which one or more persons herein after called the foreman or foremen enter into an agreement with a number of persons that every one of the contracting parties shall subscribe a certain amount of money or quantity of grain by periodical instalments for a certain definite period and that each in his turn, as determined by lot or by auction or in such other manner as may be provided for in the variola, shall be entitled to the prize amount. The definition permits there being more foremen than one in the chitty and it also requires that every one of the contracting parties, i. e., that every one of the subscribers inclusive of the foremen shall subscribe a certain amount, which means that when there are joint foremen, each of them shall individually be a subscriber.

There are chitties which are conducted by more persons than one, and the definition requires that each of them shall subscribe a certain amount and that each of the subscribers shall be individual subscribers in the chitty. For instance, chitties are started by the Karanavan of a Marumakkathayam tharwad and the Karanavan joins the Anandiravans for the purpose of a better security and between these joint foremen, they take only one ticket In such cases, the chitty falls outside the definition. In cases where there are joint foremen, unless each of them is an individual subscriber, the chitty falls outside the definition and it attracts the provisions of the Penal Clause.

Then again, the definition requires that each subscriber shall subscribe a certain amount so that in each chitty there shall be a fixed amount to be paid as subscription by each subscriber. If so, 90 per cent. of our ordinary chitties will fall outside the definition, because we know that almost in every chitty, we have subscribers who take full tickets, half tickets, quarter tickets and so on.

Now I will concede for argument's sake that the subscriptions to be paid by each subscriber are not the same. It will mean that in a chitty different subscribers may subscribe different amounts; then the matter will become more difficult, because the latter part of the definition requires that each subscriber shall get as his prize the prize amount as defined in Clause 9 of the Bill. The prize amount is defined in Clause (9) as being equal to the chitty amount minus the discount. In the case of lot chits, where the prize-winners are determined by drawing lots, the prize amount is a definite amount for all the instalments. In auction chitties, the

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[Mr. V. N. Padmanabha Pillai.]

amount may vary from instalment to instalment. Therefore, in the case of lot chits, the subscribers who pay different subscriptions, viz., a man who pays Rs. 5 and a man who pays Rs. 100, will be getting the same amounts as his prize amount. Therefore, a cunning foreman might so provide in the variola. Supposing there are 20 tickets in a chitty, and the foreman provides in the variola that whereas the nineteen subscribers are to pay Rs. 100, the foreman shall pay only Rs. 5 and he shall be entitled to the prize amount, this chitty will fall within the definition. My submission is that similarly chitties which are almost of daily occurrence and which are supposed to be perfectly honest transactions will fall outside the definition and therefore will attract the provisions of the Penal Clause. As such the amendment which I propose appears to be necessary. The second part of the amendment is about the omission of the explanation. Explanation I reads thus:

> "A transaction in which the right to a prize is wholly dependent upon the drawing of lots and whereby some alone, but not all of the subscribers, get the prize without any liability to pay future contributions is not a Chitty within the meaning of this clause."

This explanation instead of helping to understand the, meaning of the word 'Chitty' misleads us. What that explanation says is that when three conditions co-exist, the transaction is not a chitty. The three conditions are: the chitties shall be lot chitties in which the prize-winners are determined by dawing of lots and the second condition is that some subscribers alone shall get prizes; the third condition is that when a prize-winner gets the prize, he would not have to pay future subscriptions. But the definition of the term chitty shows that any one of the latter conditions will suffice to make the transaction fall outside the definition of chitty. Therefore, when the explanation says that when these three conditions co-exist, the transaction is not a chitty, it is misleading

Then again what the explanation actually says is that if some alone of the subscribers get prizes without any liability to pay future subscriptions the transactian is not a chitty. This should mean that if all the subscribers get prizes without liability to pay future subscriptions, the transaction will be a chitty. Such a position will may be accepted by the authors of the Bill. Therefore, that explanation may be omitted rather than retained. Explanation II is innocuous, but it does not go far enough and therefore the amendment that I have suggested is necessary.

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It is seen that the definition, as it stands at present, is not the creation of the authors of the present Bill. It has been on the Statute Book from 1094 when it was passed for the first time and without a precedent to follow. As such it is only natural that such mistakes might creep in. But if they are mistakes there is no reason why we should retain them now.

For these reasons, I commend the amendment for the acceptance of the House.

Sahib Bahadur M. K. Mackar Pillai (*Nominated*): I second it.

Mr. K. A. Raman Pillai: I oppose the amendment excepting the last clause in the second paragraph of the amendment. I do not know whether I will be in order if I support part of the amendment and oppose the remaining part.

President: It was quite open to the honourable member to have put in another amendment. Anyhow, you may speak and indicate your views.

Mr. K. A. Raman Pillai: The amendment, except the last clause in it, does not serve any useful purpose. There is, in my opinion, no precision and conciseness about it. It is argumentative. If we read the definition along with clauses (12) and (13) of Clause 3, it would be clear that there is no necessity for the proposed amendment. Further, there is no warrant in thinking that the definition requires that everybody should subscribe the same amount. What the definition itself says is that each shall subscribe a certain amount. It does not say that each shall subscribe an equal amount and so long as it does not say so, there is no necessity for pointing out that each subscriber need not subscribe the same amount. That is my submission with regard to that.

Clause 12 defines a "subscriber." A subscriber includes a person who holds a fraction of a ticket. It follows that a man can have a fraction of a ticket, viz., one fourth or one eighth as the case may be. A ticket is also defined thus. Ticket means "a share of a subscriber in a chitty." If he has only a fraction of the ticket his share in the chitty will *a fortiori* decrease.

Mr. G. Ravi Varma: Is the honourable member opposing both the amendments?

Mr. K. A. Raman Pillai: Yes; except the last clause in the second paragraph of the amendment. The share will increase or decrease according to the number of tickets. According to paragraph 1 it may vary according to the nature of the ticket. And there is no prohibition for a person to take less than one ticket. It is clear from clause 9. It is also clear that a subscriber can take more than

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[Mr. K. A. Raman Pillai.]

one ticket. He can also take a fraction of a ticket. These things are quite clear from the definition. We must have the whole scheme of the Bill before our mind's eye before amendments are proposed. Each clause does not stand by itself.

Then my learned friend's complaint is about the joint foremen. The joint foremen, he says must be allowed to subscribe jointly. The very term joint foremen in my opinion precludes the possibility of any misunderstanding. In the Bill, it is provided that these joint foremen with be severally and jointly liable to the subscribers in the chitty. The interests of the subscribers are amply safeguarded. It is not necessary to grant any concession or privilege to joint foremen as pointed out by my friend.

Then, my friend contends for the position that the prize amount that a subscriber should get must be the prize amount as defined in clause 9 and must be proportional. There is no meaning in this amendment, for the term 'prize amount' has been defined in sub-clause 9 of clause 3 as 'the chitty amount less the discount.' And the definition of chitty makes it clear that every subscriber must get the prize amount and if any subscriber does not get the prize amount, the transaction does not come under the category of a chitty. Such transactions are prohibited. Therefore my submission is that there is no necessity for such an amendment. It is superfluous. Why should we introduce unnecessary matters here? That is my submission in respect of these amendments. But in regard to the last clause in the second paragraph, *viz.*, "omit the explanations now existing in sub-clause (2)" I agree with my learned friend, Mr. Padmanabha Pillay. I may State that I am for the deletion of the explanations as proposed by my friend. Explanations are intended only for elucidation or clarification. They should not mislead especially when the definition is clear. Explanation should not create complications. It is quite harmless if the prize is determined by drawing lots. So that clause does not explain anything. The explanation proceeds further. What I say is that even if we stop in the middle of the explanation the transaction will not be a chitty. If only some people get the prize amount but not all, the transaction will not be a chitty. That makes it clear that all must get the prize amount. There is therefore no harm in concluding the sentence earlier. But the sentence further proceeds thus: "Without any liability to pay future contributions." If some only have a liability to pay subscriptions then also it does come within the category of a chitty. These two conditions need not co-exist to take a transaction out of the category of chitty. One condition alone is necessary. The first portion

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of the explanation is unnecessary. Of the remaining portion one condition alone is necessary. The explanation as it stands may lead to the mistaken impression that both the conditions should co-exist in order to take a transaction away from the category of a chitty. That is all what I have to say. I have nothing more to add.

Mr. Joseph Vithayathil (*Co-opted for the Travancore Chitties Bill*) : I oppose the amendment. Over and above the points raised by the honourable member Mr. Raman Pillai, there is another difficulty in accepting the amendment. The definition of a chitty given in the Bill is the one that is contained in the Chitty Act as it exists at present. Certain provisions of this Bill are made applicable to chitties conducted under the existing Act also. Part ten of the Bill is made applicable to all chitties whether started under the existing Act or under the proposed new Act. If we are going to have two definitions for the word chitty in the two Acts, there will certainly be complications when the provisions of this new enactment are sought to be made applicable to chitties started under the existing Act. This aspect of the question has to be borne in mind when we think of altering the definition of this word chitty. Moreover, it is a definition which has stood the test of criticism for over 26 years and I do not think it is necessary to make any alteration. The definition may not be perfect, But people in Travancore know clearly what a chitty is and I do not think it necessary to add on explanations describing the various characteristics of a chitty. We are certainly not writing a short essay on chitty. I therefore oppose the amendment.

Mr. V. N. Padmanabha Pillai : Does the honourable member think it is necessary under the definition that each of the subscribers should subscribe the same amount or is it possible to take subscribers for different amounts?

Mr. Joseph Vithayathil : It is not necessary that all subscribers should subscribe the same amount.

Mr. V. N. Padmanabha Pillai : Is it not necessary, under the definition, that each subscriber should get the same prize amount as his prize?

Mr. Joseph Vithayathil : Prize amount is defined in sub-clause 9. "Prize amount means the chitty amount less the discount ; it includes, in the case of a fraction of a ticket the difference between the proportionate chitty amount and the discount on the particular fraction of the ticket. Therefore each subscriber need not get the same prize amount.

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Mr. V. N. Padmanabha Pillai : Does not the word show that the expression can have other meanings also? The prize amount includes a smaller amount but it does not say that it includes a bigger amount.

Mr. Joseph Vithayathil : If a person takes more than one ticket it will be a bigger amount. If he takes a fraction of a ticket it will be a smaller amount.

Mr. G. Revi Varma : Are the explanations to that section really necessary?

Mr. Joseph Vithayathil : They may not be absolutely necessary but they have been there for these 26 years and created no difficulties and I think it is not necessary for us to delete them now. Moreover clause 4 refers to transactions partaking of the nature of a chitty but not falling within the definition in clause (2) of Section 3. These explanations give us an idea about such transactions.

Mr. K. G. Kunjukrishna Pillai : (*Advocate General*) : I may interrupt and say that the explanations are absolutely necessary.

Mr. N. Ramakrishna Pillai : I oppose the amendment. The definition in the Bill is not a novel definition. It has been in existence for more than half a century. It was adopted from certain legal decisions. The very same definition existed in the Chitties Act III of 1094.

Since the definition was incorporated in the Chitties Act III of 1094, various cases have come up before the High Court for decision in regard to the nature of a chitty transaction. This definition has therefore stood the test of judicial criticism for over 25 years. To say that the definition is incomplete or that it may give rise to difficulties is not therefore correct.

Mr. V. N. Padmanabha Pillai : Was the definition according to the full bench decision intended for being utilised in an enactment?

Mr. N. Ramakrishna Pillai : Whatever view the learned judges might have taken it has been found to be a very correct definition of the nature of a chitty, and that is the very reason why it was incorporated in the Chitties Act III of 1094.

In regard to the nature of a chitty, honourable members might remember that there have been various cases with regard to the exact nature and incident of a chitty transaction as for instance whether a particular transaction was a chitty or whether it was a wager. In all these decisions it has never been found that the definition given in Act III of 1094 was incomplete or inaccurate. Moreover, a committee consisting of very learned gentlemen was appointed to consider the proposals now embodied in this bill ; they collected information by issuing a questionnaire and getting answers ; and

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after considering all the aspects of the whole question they prepared a Bill, which was introduced in the other House, was referred to a Select Committee and it is that Bill which we are discussing now.

Mr. V. N. Padmanabha Pillai: Does it mean that discussion in this House on the Bill is not necessary?

Mr. N. Ramakrishna Pillai: I do not say that. But I am only saying that this definition has been subjected to very elaborate and very careful criticism in all its aspects; it was so examined when the old Act was in force, when the matter was referred to a committee, when the Bill was introduced in the other House, and also when it was discussed by the Select Committee, and the other House. Therefore I say that careful attention has been paid to the question.

Apart from that I have to say that in regard to this definition there is also the fact that the whole definition, not only this one portion, but the whole of it is contained in the Act of 1094. The learned mover of the amendment stated that difficulties might arise on account of the existence of the explanations. I do not see any difficulty. Take the case of a tarwad. If a tarwad joins a chitty, the entire tarwad would be considered to be a single individual subscriber for the purposes of the chitty. But if, on the contrary, the different members of the Marumakkathayam family join a chitty in their individual capacity they will be considered to be different subscribers. Therefore there is no difficulty in regard to cases of joint subscribers of the chitty. I have not been able to see what exactly the difficulty is.

Mr. V. N. Padmanabha Pillai: According to the definition each subscriber shall get as his prize the prize amount as defined in the Bill, which is the chitty amount less the discount, so that persons who subscribe different amounts shall not get the same amount.

Mr. N. Ramakrishna Pillai: A definition certainly is not intended to lay down all the conditions or all the requisites of a transaction dealt with in that definition. A definition is intended simply to describe the nature of a transaction with which it deals. For instance, the case of the subscriber taking the fraction of a ticket may not find a place in a definition. It is not possible at all in defining a particular transaction to bring in all the conditions and all the characteristics and all the consequences of that transaction. The purpose of the definition is only to indicate the nature of a transaction and that is exactly what has been done. I submit that the definition has been in existence for over 60 years. It has been found to be quite satisfactory at any rate for over 25 years after the enactment of the Chitties Act of 1094 and I conside that it is not right to tamper with it at this last stage of the Bill

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[Mr. N. Ramakrishna Pillai.]

The amendment to clause 3 was put and lost.

The question that clauses 3, 4, 5 and 6 do stand part of the Bill was put and carried.

The clauses were added to the Bill.

Clause 7.

Mr. V. N. Padmanabha Pillai: I move:

"In clause 7 omit the words" 'notwithstanding ..... in Section 6' and put "The" for the first "the"."

It is only a verbal alteration that I am proposing. It is not exactly an amendment. It is provided in clause 6 that all chitties are compulsorily registrable. In Section 7 it is said that provisions of the Act shall not apply to a particular kind of chitty, that is, chitties with a chitty amount of less than Rs. 100. In the circumstances, "notwithstanding anything contained in Section 6" is irrelevant.

The amendment was not seconded.

The question that clauses 7 and 8 do stand part of the Bill was put and carried.

Clauses 7 and 8 were added to the Bill.

Clause 9.

Mr. V. N. Padmanabha Pillai: I move:

"In Clause 9 sub-clause (9) substitute' 'the respective:- instalments at which the foreman and the subscribers are to get their prizes' for the present sub-clause,"

The necessity for this amendment arises in this way. There are two kinds of practice with regard to the conduct of chitties One is that the foreman will appropriate towards his prize amount the collections from the subscribers' in some particular instalments say, the first. So the collections of the first instalment are appropriated by the foreman for his prize. But at the same time at the same instalment the determination of the first prize winner among the subscribers is also made. If it is an auction chitty the auction is held. If it is a lottery chitty the lot is drawn. But the prize amount will be paid to the subscriber only at the second instalment. Similarly the subscriber whose prize is determined at the second instalment will get his amount only at the third instalment and so on. Now there is another practice where the collections for the first instalment are appropriated by the foreman towards his prize amount, but the determination of the first prize winner is made only at the second instalment and then the prize winner will get his prize amount immediately. Similarly the second prize winner among the subscribers is determined at the third instalment and

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he gets the prize at the third instalment. Thus it will be seen that there are two different kinds of practice obtaining with regard to the conduct of chitties. It will be seen from the later clauses of the Bill that this Bill takes notice only of the second kind of practice and not the first. Between the two kinds of practice the first is the better one, because when the prize winner is determined at the first instalment and he is paid the prize amount at the second instalment, the subscriber gets sufficient time to prepare his security for the prize amount. And also the money will not lie idle in the hands of the foremen till the subscriber furnishes the security.

Mr. N. Ramakrishna Pillai : Is it not this clearly an indication as to what a variola should contain? Is it necessary to state all these things here in the Bill?

Mr. V. N. Padmanabha Pillai : This amendment is necessary in order to facilitate my amendment to Section 19. On a reading of Section 19 it will be seen that the Bill takes cognizance only of the second kind of chitty. The first kind of chitties which is considered to be the better one is not taken notice of by this Bill. For instance, sub-clause 2 of Clause 19 says that if due to default of the prize-winner, the prize amount due in respect of any drawing remains unpaid before the next succeeding instalment, the foreman shall invest the money and intimate in writing that fact to the prize winner. In the first kind of chitty that is not the practice Therefore Section 19 will show that the first kind which is the better kind has not been taken notice of by this Bill. That shows that there is necessity for an amendment and hence the amendment that has been proposed by me may be accepted. This is a detail which must find a place in the variola. Because there are two kinds of practice in the conduct of chitties, my amendment becomes essential.

Mr. G. Narayana Aiyar : I support the amendment Section 9 deals with the contents of the *variola*. When we are enacting a legislation it is highly necessary that it shall be self-contained and exhaustive without giving room for any comment from courts. On a reading of the sub-clauses it is seen that there is no provision for the insertion of a clause in the variola as to when the amount due to the subscribers is to be paid. Details such as the full name and residence of every subscriber, the number of tickets held by him, the number of instalments and the amount payable at every instalment, the date on which the chitty is to begin and terminate, the mode of ascertaining the prize winner at the instalments, the amount of discount which a prize winner has to forego, the time and place at which the chitty is to be conducted,

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[Mr. G. Narayana Aiyar.]

the instalment at which the foreman is to get the prize-these and other details are embodied in the *variola*. There is no provision which says about the instalment at which the prized subscriber is to get his prize amount. That also must be included so that there may not arise any difficulty or controversy over the same. As such I support the amendment.

Mr. T. M. Chidambarathanu Pillai : Sir, I oppose the amendment. When a variola has to be brought into existence with the agreement of the subscribers and the foreman as if it were a contract, the foreman has the right to get the prize amount. It is a concession given to him because he becomes the head of that scheme of contract. In view of that position he has to be shown some consideration and therefore the instalment at which the foreman is to get the prize is a very necessary condition to be inserted in the variola. If that is not prominently mentioned there will be difficulties from the subscribers in the matter of giving the amount to the foreman. Suppose the foreman is not given the prize of the particular instalment, then, he will be watching as to when he may get the amount from the Chitty and he will not be disinterested in his conduct of chitty. The subscribers will not be free to exercise their right of bidding. Therefore it is particularly necessary to provide for the instalment at which the foreman is to get the prize. That provision must become a part of the contract.

In this connection section 19 may be referred to. All that it says is that the foreman shall pay the prize amount to the subscriber after obtaining sufficient security for the payment of future subscriptions from him. Therefore it does not mean that the foreman ceases to be a subscriber. There also it could be seen that he is given a concession on account of the contract between the subscribers and the foreman and that the instalment at which the foreman is to get the prize must find a place in the variola. There is no need to mention the instalment at which the subscriber is to get the prize.

Mr. G. Narayana Aiyar : Is it a fact that there are chitties in which a subscriber is to get the amount not at the time he should get but on future dates ?

Mr. T. M. Chidambarathanu Pillai : As a part of the contract a subscriber can get the prize at any instalment only if he bids for the lowest amount. From this it could be inferred that each subscriber is entitled to get his share of the prize amount when he prized the ticket. It is left to the subscriber to pay the subscription according to the availability of money with him. Therefore, it is not necessary to mention in the variola as to the instalment at which a subscriber is to get the prize.

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Mr. K. A. Raman Pillai: Sir, I support the amendment. I do not agree with the arguments advanced by Mr. Chidambarathanu Pillai. He was saying that the prize given to the foreman is something like a concession given to him. That is not so. As a matter of fact, the foreman is also one of the contracting parties and it is on the basis of a contract that a foreman is entitled to receive the prize amount. There is no question of any concession arising in this matter. Clause 9 does not provide for the instalment at which a subscriber is to get the prize amount. It would have been better if the Bill had provided for the instalment at which the subscribers also are to receive the prize amount as it has provided in the case of foreman. It may perhaps be pointed out by the Legal Remembrancer that clause 19 makes the necessary provision for that purpose. But that contemplates only cases of default. Clause 19 reads thus:

> "If, owing to the default of the prize winner, 'the prize amount' due in respect of any drawing remains unpaid before the date of the next succeeding instalment the foreman shall invest the same forthwith in any approved bank mentioned in the variola and intimate in writing the fact of such investment to the prize winner."

From this we may infer that prize money has to be paid before the date of the next succeeding instalment. Clause 30 says:

> "Every prized subscriber shall, before drawing the prize amount, furnish sufficient security for the due payment of future subscription and if the foreman is the prized subscriber he shall give security for the payment of future subscriptions to the satisfaction of the Registrar."

These clauses do not prescribe the time for payment. Therefore by some provision in the Act that matter has to be made clear. It may be contended that rules when framed may provide for all that. To me it appears that in the interest of the subscribers, it is necessary to have the clause amended as proposed by the mover of the amendment.

Mr. Joseph Vithayathil: Sir, without this new provision chitties have been started and conducted for the past twenty six years without any difficulty. It is clear that the particulars referred to in the amendment will find a place in every variola. It is one of the necessary terms of a chitty contract. But the object of clause 9 is entirely different. It aims at preventing a foreman from committing fraud on the subscribers by not explicitly mentioning certain particulars in the variola.

Mr. G. Narayana Aiyar: Is it not a concession given to the Government rather than to the subscriber or foreman to make new provision?

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Mr. Joseph Vithayathil: No, Sir. The Legislature only requires that certain particulars which are thought to be necessary for preventing the commission of fraud should find a place in the variola. There may be many other provisions in the variola that may be agreed upon by the parties. Moreover under sub-clause 13, Government can prescribe any other particulars that should be embodied in the variola.

Mr. G. Narayana Aiyar: May I know whether the foreman and the subscribers can join together and substitute any more clause in the variola other than those mentioned therein?

Mr. Joseph Vithayathil: Certainly.

Mr. G. Narayana Aiyar: May I know what is the provision?

Mr. Joseph Vithayathil: The Statute says that the variola shall contain certain particulars. That does not mean that there should be no other particulars in a variola. There is nothing in the Bill to prevent the foreman and the subscribers from embodying any other provisions in the variola so long as they do not conflict with the provisions of the Bill.

Mr. G. Narayana Aiyar: If that was the intention then a similar amendment now suggested could have been inserted here.

Mr. Joseph Vithayathil: So far as certain particulars are concerned it is thought desirable that the Legislature should insist that they should be specified in the variola. If from the working of the act it is found that it is necessary to insist on the inclusion of certain other particulars also in the variola, Government is given the power to prescribe those particulars from time to time.

Mr. K. A. Raman Pillai: May I know from the member whether it is incumbent upon the subscribers to add particulars other than those mentioned in clause 9 of the Bill?

Mr. Joseph Vithayathil: In a transaction of this character the subscribers and the foreman should settle the terms of the contract they enter into. It is a matter of agreement between the parties. Under these circumstances there is no need to make a provision in the Bill in the manner suggested by the amendment.

Mr. N. Ramakrishna Pillai: Sir, I oppose the amendment. Clause 9 is intended to indicate what all subjects should a variola treat about. Honourable members will remember that a variola is a record of the agreement arrived at between the foreman and the subscribers. It is a written agreement. To say that every condition should be mentioned in the variola is not a practicable

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proposition. It is a matter of common knowledge that variola should contain certain essentials for the chitty subscribers and the foreman to act upon. In these circumstances it is surprising to me that one honourable member should have suggested that a variola should contain all the conditions that are necessary for the smooth working of the chitty.

Mr. M. Govindan (*Nominated*) ; Is it possible to imagine that any subscriber would join the chitty without knowing when he is to get the prize amount?

Mr. N. Ramakrishna Pillai: That is a sound position.

Mr. M. Govindan: What I therefore suggest is that a subscriber may know all the relevant details such as the instalments at which he is to get the prize amount, etc. Some sort of control is necessary for the foreman to answer the needs of the subscribers, and nothing more is needed.

Mr. N. Ramakrishna Pillai: About thirteen conditions have been mentioned in clause 9 and they deal with the various particulars. In actual working these conditions are found to be essential. Apart from these there may arise several other matters on which the parties may come to an agreement.

Mr. K. A. Raman Pillai: May I know what is the objection in adding this condition?

Mr. N. Ramakrishna Pillai: It is not necessary that this provision should find a place in the statute. All the matters in the thirteen sub-sections of the section are compulsory provisions to be stated in the variola. There may be several other conditions on which the foreman and the subscribers may be willing to come to an agreement. It is idle to expect that all these conditions should be embodied in the variola. A foreman's position is a little peculiar. It is unlike that of a subscriber because he is permitted by the Act to join as a subscriber as well. That being the case it is very necessary to state in a particular manner what all benefits he can enjoy and what he is entitled to.

Again, honourable members will realise that it is only by way of illustration that these things are mentioned. Sub-clause (13) of clause 9 says "any other particulars that may from time to time be prescribed by Our Government." So that, it will be seen that Government have taken upon themselves the responsibility of prescribing certain rules with regard to the other conditions to be mentioned in the variola. Those other conditions will be mentioned in the Rules. Therefore I submit that the amendment is quite unnecessary and so I oppose it.

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Mr. V. N. Padmanabha Pillai: Am I not to take it that there are two sets of people, one set whose money is paid in the same instalment and the other at a future instalment at which the prize winning is done?

Mr. N. Ramakrishna Pillai: I am aware that there are several kinds of chitties. But the scheme of the Act shall be based on those conditions which are expressly mentioned in the Act.

Mr. K. G. Kunjukrishna Pillai: I want a fundamental point to be understood by honourable members in the discussion of this Bill. In every chitty contemplated under this Regulation, whether the subscriber gets the money at the moment the auction is bid or at a later period, the fundamental principle is that the subscriber is entitled to get the money at the moment the chitty is bid. When I become a subscriber and bid the chitty, on principle I am entitled to get the money immediately. But I may not be able to give satisfactory security to the foreman and then get the money. My honourable friend, Mr. Padmanabha Pillai, is contemplating a case where the prize money is put off for payment to a future period. All right. Who prevents you from doing that? As has been rightly pointed out, there are what are called mandatory provisions which must find a place in the Regulation. That does not prevent any Variola from saying that the subscriber may get the money on some other day. But the principle of the whole scheme is that the subscriber is entitled to get the money the moment he bids the chitty. You may put it in the variola that the subscriber who bids the chitty shall not get the money on that day. But the Statute must contain mandatory provisions, and this is one of those conditions. In these circumstances, I expect that honourable members who have got more experience than me in the conduct of the chitties to see that we get over these difficulties.

President: Yesterday the House was discussing this Bill and then probably it was thought that it will all be over in an hour or so. But out of 73 Sections or so we have covered only 9 Sections. So there are 64 Sections more to be gone through. If we are proceeding at this pace there is no chance of finishing the Bill before the end of the day. It is for the House to decide that. I am in the hands of the house.

Mr. K. A. Raman Pillai: Yesterday two hours were allotted for the discussion of this Bill.

Mr. V. N. Padmanabha Pillai: I will press only a few amendments.

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President: I am in the hands of the house. It is for them to decide whether we should go on with the Bill or not.

It was decided by the house that it should go on with the Bill.

Mr. G. Narayana Aiyar: In the face of the interpretation put upon clause 9 which it is said deals with only mandatory provisions, I do not press amendment No. 5.

The question that clause 9 stand part of the Bill was put and carried.

The clause was added to the Bill.

Clause 10 and 11.

The question that clauses 10 and 11 do stand part of the Bill was put and carried.

The clauses were added to the Bill.

Clause 12.

Mr. G. Narayana Aiyar: There seems to be an omission in clause 12, Sub-clause (1) of clause 12 says "Every subscriber to a chitty shall be supplied by the foreman with a true copy certified as such by the foreman". The clause does not say it should be signed. As it is it does not mean that the variola should be signed. Certification is not defined in the Evidence Act or in the General Clauses Regulation. What does certification mean? The dictionary meaning of certify is "Inform certainly" or "declare". It will be seen that a default under the sub-section is penalised so that action can be taken against a foreman by a subscriber who issues it. I have moved this amendment so that there will not be any loop-hole for action being taken against the foreman who may contend that the copy not being signed by him was not issued by him and so no action lies.

President: In the Oxford Dictionary the word "certified" is defined as "attest formally".

That means that signature has been put to it.

Mr. G. Narayana Aiyar: I think it is an omission. Attestation need not mean or include signature.

President: I take it that the word "certified" involves the signature also.

Mr. G. Narayana Aiyar: Sir, the words "signed and" may be added to avoid complications. There is further difficulty. Section 76 of the Evidence Act which deals with certified copies specified declares "..... shall give a copy together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof as the case may be and such certificate shall be dated and subscribed by such officer ....."Civil Courts Guide section 759 which deals with certified copies also says. "The pages of the copy granted on application shall be consecutively numbered

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[Mr. G. Narayana Aiyar.]

and the bottom of every page shall bear the examiner's initials and the last page should be signed in full by him.....He shall also sign a certificate at the foot of each copy that the same is a true copy". From the above it will be seen that "certify" may not include signing. "Certify," is nowhere defined in any statute so far as I am aware not even in the General Clauses Act. As such to avoid controversy the words "and signed" may be added.

President: All right. The words "signed and" may be added.

The question that clause 12 as amended do stand part of the Bill was put and carried.

The clause was added to the Bill.

Clause 13.

Mr. V. N. Padmanabha Pillai: Sir, I move "In clause 13 sub-clause (1) para 2, insert between "be" and "subject" the words "deemed as part of the provisions of the variola and "shall be". This is the clause which provides for the passing of special resolutions to alter or add to the provisions of the variola. Para 2 of sub-clause (1) says "Any such alteration or addition shall be as valid as if originally contained in the variola and shall be subject in like manner to alteration or addition by a special resolution". If my amendment is carried it will read thus: "Any such alteration or addition shall be as valid as if origirally contained in the variola and shall be deemed as part of the provisions of the variola and shall be subject in like manner to alteration or addition by a special resolution". The necessity for this amendment can be seen by a reading of clause 14—Clause 14 reads thus: "Every drawing of prizes in a chitty shall be conducted at the time and place mentioned in the variola and in accordance with the provisions contained therein. Having said in clause 13 that the provisions of the variola may be altered by a special resolution, to say in the next clause that the provision of the variola shall be followed would be misleading. If clause 14 is to be properly worded it should be "every drawing of prizes in a chitty shall be conducted at the time and place mentioned in the variola if such time and place have not been altered by a special resolution and at such time and place if altered by a special resolution". But instead of that we can get over the difficulty by amending clause 13 as proposed. Therefore the words suggested by me may be put in clause 13. These words were in the Amending Act of 1108. I think that it is by an oversight that these words have been omitted. Reference may in this connection be made to clause 39. That clause reads "A chitty shall be deemed to have terminated only :—

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(i) When the period fixed in the variola or the period as altered by a subsequent special resolution for the duration of the Chitty has expired".

So the necessity for this amendment is found in clause 39. This difficulty can be overcome by the amendment suggested by me in clause 13. As I said it may be by an oversight that these words were omitted which found a place in the Amending Act of 1108.

Mr. N. Narayana Kurup: I second it.

Mr. Joseph Vithayathil: I oppose the amendment. When, by a special resolution, any alteration is made in the variola it becomes part of the variola and such alteration shall be as valid as if originally contained in the variola. I do not see why it is necessary to add the words mentioned in the amendment to make the meaning clear.

Mr. V. N. Padmanabha Pillai: Section 13 says that there are two sets of variolas, one the original variola and the other those with the alterations made by a special resolution. Hence the necessity for the words.

Mr. Joseph Vithayathil: When any alteration is made in the provisions of the variola the sub-clause says that such alteration becomes part of the original variola. I do not think that the words suggested are necessary.

Mr. N. Ramakrishna Pillai: I oppose the amendment. When a special resolution is passed altering the provisions of the variola, as stated by Mr. Vithayathil, the effect of the resolution will be that such alterations will be taken as part of the original variola. Therefore it is unnecessary that in clause 13 the words "deemed as part of the provisions of the variola and shall be" should be added. I submit there is absolutely no reason why at every stage the words should be repeated when it is clear that if by a special resolution any alteration is made in the variola it will be taken as if it formed part of the original variola itself.

The amendment was put to vote and lost.

Mr. G. Narayana Aiyar: Sir, I move "In sub-section (2) after the word "sub-section (1)" add the following "certified as such by the foreman". Clause 12 says "Every subscriber to a chitty shall be supplied by the foreman with a true copy certified as such by the foreman". The words "certified as such by the foreman" have been omitted. I think it is an omission.

If the copy supplied is not certified as a true copy by the foreman and signed by him the foreman may plead ignorance

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[Mr. G. Narayana Aiyar.]

to get over that difficulty or he may even deny the genuineness and correctness of the same. If we add this as a sort of amendment, that is, "certified as such by the foreman" it may be useful at least to get at him in case of doubt or dispute. That is the first amendment.

Then, I wanted to add something more to the end of the sub-clause. "The Registrar shall verify the correctness of the copy with the original and sign the original". In practice, we find the foreman misusing the existing provisions if necessary to defeat a subscriber. What happens in certain cases is this. Since there is no responsibility imposed on the foreman to take the original minutes book to the Registrar for verification of the copy produced to be filed some skilled foremen do not write the minutes in the book, keep it blank to be filled up later with whatever that may become necessary and file the minutes copy prepared with the Registrar. Later on when any dispute arises he writes in the minutes book what is disadvantageous and files it in court. If the party wants to verify the correctness he has to run up to the Registrar's Office and get a copy and verify. That is troublesome and costly and has to be avoided. The amendment is intended to prevent such fraud. It is advisable that the foreman takes the original also to the Sub-Registrar and sees that he initials the minute book. Then, the people can act upon it. In the case of sale deeds such verification and comparison is done by the Registrar.

Mr. V. N. Padmanabha Pillai: I second it.

Mr. N. Ramakrishna Pillai: Sir, this provision is quite unnecessary, because..... ...

Mr. G. Narayana Aiyar: I have dealt with two amendments. Which do you oppose?

President: You have moved clauses 7 and 8 together; have you not?

Mr. G. Narayana Aiyar: Yes, Sir.

Mr. N. Ramakrishna Pillai: It is provided in the Section that a true copy shall be supplied by the foreman. It is a true copy that is to be filed under sub-section (3).

Mr. G. Narayana Aiyar: Sir, it is stated in Section 12 that the true copy should be certified as such by the foreman. When this is thought necessary so far as Section 12 is concerned, I do not know why when we get on to other Sections it is considered unnecessary.

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Mr. N. Ramakrishna Pillai: Sir, practically there is no difference in this respect between Section 12 and the other sections.

President: Mr. Legal Remembrancer, I think it may be useful to have the same formula throughout.

Mr. N. Ramakrishna Pillai: Yes, Sir, the omission of the word "true" is only a printer's mistake. The act of certifying will not improve matters. There are other points to be remembered. According to clause 43, every subscriber has a right of inspection in regard to chitty records, when they are in the hands of the foreman. He has a right of inspection when the records are in the hands of the Registrar according to Clause 63. There is punishment also provided in section 69 for making false statements.

President: What does the honourable member say to a kind of general explanation by which you explain "certification" as meaning "signed and duly attested"?

Mr. K. G. Kunjukrishna Pillai: Yes, by "true copy", it may mean a copy signed and duly attested.

Mr. N. Ramakrishna Pillai: Sir, even in the Evidence Act, where the expression constantly occurs, it was not thought necessary to give an explanation. It is not defined anywhere in that Act.

President: I am not referring to this particular statement of the mover of the amendment. But what I would say is that it might possibly be declared in the General Clauses Act what 'certification' means. You might have a formal amendment made in the General Clauses Act. I hope that will be all right. We undertake to do that. Mr. Legal Remembrancer will keep that in mind.

Mr. G. Narayana Aiyar: Sir, on that basis I do not press amendments 7 and 8.

Sir, as regards amendment No. 9, even the words 'true copies' are not in the Bill.

Mr. N. Ramakrishna Pillai: That is only a printer's mistake.

The question that Clause 13 as amended do stand part of the Bill was put to vote and carried.

Clause 13 was added to the Bill.

The question that Clause 14 do stand part of the Bill was put to vote and carried.

Clause 14 was added to the Bill.

President: Mr. Legal Remembrancer will take note of these amendments and the amendment to the General Clauses Act.

Mr. N. Ramakrishna Pillai: Yes, Sir.

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Clause 15.

Mr. V. N. Padmanabha Pillai: Sir, in clause 15, for the words "be kept in a book" substitute "as soon as the drawing is over be written in a book kept for the purpose".

Clause 15 is the clause which provides that the foreman should keep a minute book, but the time of writing the minute is not prescribed. Clause 16 provides that a true copy of the minutes shall be filed with the Registrar within fourteen days. Reading clauses 15 and 16 together, it is seen that the foreman could write the minutes at any time within the fourteen days. To allow that would be a bad practice. What is now sought to be provided is that the foreman should be made to write the minutes as soon as the drawing is over.

Mr. N. Ramakrishna Pillai: Sir, I oppose the amendment. In the Chitty Act, three weeks are provided. Now it is considered necessary to reduce the period. It is not necessary that the foreman should immediately after the drawing go to the Sub-Registry Office and file a copy. He is not a kind of shop-man. We have reduced the number of days from 24 to 15.

Mr. K. A. Raman Pillai: Has this clause any thing to do with the production before the Sub-Registry office?

Mr. N. Ramakrishna Pillai: No.

Mr. Joseph Vithayathil: Sir, I think my honourable friend, Mr. Padmanabha Pillai, does not refer to the time within which the minutes should be filed before the Registrar. He refers only to the time when it should be prepared. Naturally, the minutes should be prepared as soon as the drawing is over. But it may not be proper to enact a penal provision with such a clause should the man be punished if he makes a delay of one or two minutes? In all these cases a reasonable time will have to be allowed and it should be for the court to decide whether there has been unreasonable delay or not.

Mr G. Narayana Aiyar: Is it not easy that it should be prepared on the very same day?

Mr. Joseph Vithayathil: That may be so. But simply because the foreman did not prepare it the very next moment, he should not be taken to task. It is clear that the proceedings should be written without undue delay. I do not think that it is necessary to add the words "as soon as the proceedings are over".

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Mr. N. Ramakrishna Pillai: Sir, this is not a matter peculiar to this transaction. The Company Law requires that the minutes should be prepared at various stages and nowhere has it been stated that the minutes should be immediately written.

Mr. V. N. Padmanabha Pillai: Suppose, the minutes are written only after a week, will it be possible to punish the foreman?

Mr. N. Ramakrishna Pillai: Sir, so many suppositions are possible. When it is stated that the minutes are to be written, it is to be expected that the minutes are to be written as early as possible. We cannot go further and make provision for punishing people who do not immediately write the minutes. It is unjust to punish a man because there is a possibility of manufacturing the minutes. Sufficient safeguards are provided. There is also stringent provision in clause 69 that any statement falsely made in any document is punishable. There are other provisions also which make it impossible for a foreman to write false minutes. This is only a codification of a pre-existing law. The Chitties Bill does not provide for matters which have not been provided for before. The provisions in the old Act relating to minutes are in consonance with the present provisions.

The question that in clause 15, for the words "be kept in a book" the words "as soon as the drawing is over be written in the book kept for the purpose" be substituted, was put to vote and lost.

The question that clause 15 do stand part of the Bill was put to vote and carried.

Clause 15 was added to the Bill.

Clause 16.

Mr. G. Narayana Aiyar: Sir, I do not press the amendments.

The question that clause 16 do stand part of the Bill was put to vote and carried.

Clause 16 was added to the Bill.

Clause 17.

Mr. V. N. Padmanabha Pillai: Sir I move that in clause 17 sub-clause (1), for "before the first drawing" the words "before the registration" be substituted.

Sir, clause 17 is the one which provides for the furnishing of security by the foreman. It says that the security need be furnished only before the first drawing of the chitty. After the registration and before the first drawing he may be in possession of funds to the value of the capital of the chitty. If so, by the provision that security need be taken only before the first drawing, the object of taking security will be defeated.

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[Mr. V. N. Padmanabha Pillai.]

Therefore, my submission is that for the words "before the first drawing "the words" before the registration" should be substituted. There is another reason also for the amendment. The clause as it stands will enable impecunious people to start chitties, because they have only to collect the subscriptions and deposit cash security. If the capital of the chitty is a thousand rupees, thousand rupees can be collected by way of subscriptions. The amount of the first instalment of the chitty can be deposited into the Bank as security and the chitty can be allowed to proceed. Supposing a number of subscribers do not pay, the foreman must be able to find money and if an impecunious man is allowed to conduct chitties, it will be to the detriment of the subscribers. Therefore, my amendment is necessary.

There is reason to think that this is an over-sight as can be seen from proviso (2). Proviso (2) makes a concession in favour of foremen who give cash security if they take a full ticket in the chitty. In the case of such foremen it is provided that part of the security may be deposited before the registration. The concession is more onerous than the obligation itself. Therefore, it cannot be explained in any other way except that it is by a mistake, that the words "before the first drawing" occur in the first clause. When the concession is made the security must be deposited before the registration. So my submission is that it must have been an oversight and therefore the necessary amendment may be made.

Mr. K. A. Raman Pillai : I support the amendment for the reasons stated by Mr. Padmanabha Pillai. It goes without saying that the Chitty will be started before the drawing of the first instalment. The foremen must be in a position to pay the prized subscribers at the time of the first drawing. It is necessary that the bond should be executed before the registration of the chitty. It will ensure confidence in the minds of the subscribers.

As the clause stands at present, in the case of cash security, 50 per cent. of the chitty amount should be deposited before the registration of the chitty. Such being the case, my learned friend Mr. Padmanabha Pillai thinks that non-insistence of the execution of the bond before registration in the matter of immovable property is an omission on the part of the framers of the Bill. But I do not think it is an omission. According to the clause, the balance amount may be deposited within seven days after the receipt of the prize amount. This has been deliberately introduced there. But my point is this. If in the case of cash security 50 per cent. of the amount should be deposited before the registration of the chitty, it is all the more necessary that in the case of the bond relating to

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immoveable property, the same should be executed before the registration of the chitty. The foremen should have received subscriptions before the actual drawing.

Mr. K. G. Kunjukrishna Pillai: That is the money for the first drawing due to the foreman. Is there a balance to be paid to the foreman at any time before the first drawing?

Mr. K. A. Raman Pillai: He can receive the subscriptions as soon as the chitty is registered and long before the actual drawing. There are also cases when he receives the subscriptions after the first drawing as per provisions in the chitty variola. It is quite possible that money will sometimes come into the hands of the foremen before the date of the first drawing. Therefore, it is absolutely necessary that the bond should be executed before the registration of the chitty. I do not know why such a concession is made to the foreman. I therefore support the amendment.

Mr. Joseph Vithayathil: So far as the question of security is concerned there is no reason why the foreman should be compelled to give the security before the first drawing of the chitty. The subscribers are required to pay their firrt subscription only at the first drawing of the chitty. No chitty money will go into the hands of the foreman before the first drawing.

Mr. K. A. Raman Pillai: Those who default?

Mr. Joseph Vithayathil: They may pay subsequently if they are permitted to do so by the variola. But the question is whether any payment will be made to the foreman before the first drawing. The reason why it is provided that the securi y need be furnished before the first drawing, and not before the registration of the chitty is that the names of subscribers in whose favour the security bond has to be executed can be ascertained only after the registration of the chitty. It is in favour of the subscribers mentioned in the variola that the security-bond has to be executed. It is therefore a matter of convenience that the foremen may be allowed to execute the security-bond at any time before the first drawing.

As for the second clause relating to cash security, it is to prevent people who are not in a position to furnish sufficient property security from starting chitties that they are required to deposit 50 per cent of the chitty amount before registering the chitty. If a person is not in a position to furnish security in the shape of property, he should not be allowed to start a chitty without depositing at least 50 per cent. of the chitty amount. If he makes such a deposit he may be allowed to deposit the balance amount after the first drawing in the manner mentioned in the sub-clause.

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Mr. T. M. Chidambarathanu Pillai: Sir, I oppose the amendment. In clause 17 provision for registration and the conduct of each chitty has been made. It is not necessary and possible always for a chitty registered to be conducted at all. Supposing a poor man registers the chitty before the first instalment being conducted, nobody will be able to pay and the chitty will not be conducted at all sometimes. So before the first drawing is over, the foreman is asked to deposit the amount. Registration is only one of the conditions. Firstly he must furnish security in the shape of property. That would test the bonafides of the foreman. Secondly, before the first drawing he must deposit half the amount. These are provided to safeguard the interests of the subscribers and the foreman. Therefore the clause as it stands is sufficient to express the idea contained therein.

Mr. N. Ramakrishna Pillai: Sir, this amendment is quite unnecessary. In the first place, the Committee has bestowed considerable attention upon this matter. It was after very careful and anxious consideration that they decided to make this provision. There is no particular reason why security should be furnished only at the time of the registration of the chitty.

The proposition that the security should be furnished before the first drawing of the chitty is not one of practical importance and there is therefore no reason why the existing provision in the Bill should be changed.

I, therefore, oppose the amendment.

The amendment was put to vote and lost.

Mr. V. N. Padmanabha Pillai: Sir, I move.

"In proviso (1) in the same sub-clause, omit the words "in such manner.....or".

The proviso provides that when the security offered by the foreman is moveable property, then it may be deposited as provided in the variola. My submission is that this provision will open a wide door for the practice of fraud. Supposing for instance, the foreman offers gold ornaments as security for the conduct of the chitty and if these ornaments are kept in the house of the foreman and a provision to the effect is inserted in the variola, then the requirements of the Section in regard to the furnishing of security are satisfied. That will be as good as not taking any security at all. Of course, the cases in which foremen furnish moveable property as security are rare, but the presence of this provision may be availed of by cunning foremen to obviate the necessity of furnishing any security at all. Of course, it might be asked whether the subscribers are so foolish as to allow the foremen to do so. But we have found in practice that there are illiterate and foolish subscribers. One of the chief objects of the present Bill is to safeguard

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their interests. In the Act that is now existing-1094 Act-there is a provision that the foreman shall give security, unless the subscribers say in writing, that security is not necessary. Though it is to their detriment not to take security, subscribers have been allowing foremen to conduct chitties without furnishing security. Therefore, the provision that security in the form of movable property may be deposited as provided in the variola has to be deleted from the Bill.

Mr. N. Narayana Kurup: I second it.

Mr. N. Ramakrishna Pillai: This provision is contained in Section 16 of the existing Chitties Act. There is no reason why the provision contained in this clause should be amended. It has been considered by the Committee and it was after carefnl consideration that they decided not to change the existing law. I submit that no reason has been made out for a change in the existing provision.

The question was put and lost.

The question that clause 17 do stand part of the Bill was put and carried.

Clause 17 was added to the Bill.

Clause 18.

The question that clause 18 do stand part of the Bill was put and carried.

Clause 18 was added to the Bill.

President: The House will now adjourn and meet again at 3-0 P. M.

The House reassembled at 3-0 P. M. after lunch, with Mr. T. W. U. Park, in the chair.

Mr. V. N. Padmanabha Pillai: Sir, I do not propose to move the remaining amendments standing in my name

Mr. K. S. Joseph: Sir I rise to a point of order Is it in order to transact official business on days which are set apart for non-official business? In the Section that deals with the business on a non-official day, it is said that precedence should be given to Bills introduced in the House by non-official members in a particular order. The Chitties Bill which is now under discussion, is certainly an official Bill, and I hope nobody could object to my saying so. By consent through inadvertence, the Bill has been allowed to be discussed so far. There are two non-official Bills to be gone through and also certain resolutions of public interest have to be discussed.

Mr. K. A. Raman Pillai: Does not the honourable member know that it is included in today's agenda with the consent of the House.

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Mr. K. S. Joseph: I quite know it. It is in spite of that that I am putting this question. I want to know if it is in order. If the House consents to it, does it necessarily mean that a thing is in order? It depends upon the ruling of the President and not upon the consent of the House.

Mr. N. Ramakrishna Pillai: According to Standing Order No. 6, the Dewan, after considering the business of the Council shall allot so many days as may, in his opinion be possible compatible with the public interests for the business of non-official Bills in the Council, and may allot different days for the disposal of different classes of such business and on days so allotted for the particular class of business, the business of that class shall have precedence. On other days no business other than Government business shall be transacted except with the consent of the Government. The Dewan may also alter the allotment from time to time.

So, it is the Dewan who stipulates the state of business in the Council. It is entirely in his discretion as to what business will be taken up on a particular day.

Mr. K. S. Joseph: Does the honourable member mean that even on the non-official day, the Dewan can transact other business?

Mr. N. Ramakrishna Pillai: There is no distinction such as official and non-official in the sense that no non-official business will be taken up on an official day or that an official business will not be taken up on a non-official day. Of course, certain days are allotted for the conduct of a particular business and it is open to the President to settle the kind of business that may be transacted on any particular day. Standing Order 6 clearly says that the Dewan after considering the business shall allot so many days as may in his opinion be possible.....

Mr. K. S. Joseph: Was it not allotted long ago and was not this day set apart for non-official business?

Mr. N. Ramakrishna Pillai: It is a business allotted beforehand but the House agreed that there was no objection to official business being taken up and the President ruled that an alteration might be made.

Mr. K. A. Raman Pillai: The honourable member did not raise any objection at the proper time.

Mr. N. Ramakrishna Pillai: Yes, we have spent nearly two hours on the Bill.

Mr. K. S. Joseph: May be we have been discussing the Bill through oversight or on account of inadvertence. I am raising

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this question as a point of order. Even if the House is willing to consider this question, it still remains and it is for the Chair to say whether official business could be conducted. That is a matter on which I want a ruling from the Chair.

Chairman: The ruling was given by the Dewan-President when he permitted this Bill for being discussed on a non official day after taking the sense of the House. I hold the point of order untenable.

Mr. K. S. Joseph: Am I to understand that the Dewan expressed a ruling?

Chairman: In effect.

Mr. K. G. Kunjukrishna Pillai: On an earlier ruling by the chair, no question can now be put.

Mr. K. S. Joseph: It is only an explanation.

Mr. V. N. Padmanabha Pillai: I do not propose to move the remaining amendments.

Mr. G. Narayana Aiyar: I am not moving the amendment No. 19, because the prior amendment was not allowed. I move amendment No. 24.

Chairman: Will the honourable member speak up?

Mr. G. Narayana Aiyar: I move amendment No. 24.

All the other amendments against the name of Mr. V. N. Padmanabha Pillai have been withdrawn.

The question that sub-clauses 1 to 4 in Section 19 do stand part of the Bill was put and carried. The sub clauses were added to the Bill.

Mr. G. Narayana Aiyar: I move the following:—

"Add the following as sub-clause (5):—If the subscriber is unable to furnish sufficient security, the prized subscriber shall intimate to the foreman his willingness to have the prize amount split up and consent to the foreman keeping the amount necessary to meet the claim for future subscriptions, and if he demands the balance, the foreman shall be bound to pay such balance forthwith on the prized subscriber executing a proper receipt for the same. The foreman shall invest the balance forthwith in any approved Bank mentioned in the variola and whenever the prized subscriber tenders sufficient security for the future conduct of the chitty, the balance after deducting all the amounts due to him till that date from the deposit as well as the interest due till that date shall be paid to the subscriber. The foreman shall have the right to draw from such deposit the amounts necessary for each instalment as often as the instalments fall due."

Section 19 deals with the position of a subscriber who is prepared to give security for payment of future subscriptions. It does not deal with the rights of the subscriber who is unable to give security

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[Mr. G. Narayana Aiyar]

within a reasonable time or unprepared to give security but wants to get the prize amount urgently for important expenses. This position has given rise to a lot of controversy and a number of decisions have been made on the subject. Since there was no provision for the case of a man who is unable to give security immediately, the courts have had to put their own interpretation, and construction on the omission and find their own methods to deal with such cases. And they have arrived at inconsistent and different rulings. I may refer to some rulings on the subject. The earliest ruling is one reported in 10 T. L. J. 263. That was a case when a prized subscriber sued for the prize money saying that he tendered security in the proper time but the foreman did not accept it ; and therefore he wanted the whole amount with interest. During the course of the argument it turned out that the Court had to ascertain what was the position of the foreman so far as the excess amount was concerned. In certain cases it may so happen that the prize amount is far bigger than the amount which the prized subscriber has to contribute in future. Supposing he has to pay only for one or two instalments more because he happens to get the prize or bids only towards the close of the chitty then the prize money he will be entitled to get will be greater than what he has to contribute till the end. What is his position then? The regulation in force as well as the bill before us has no provision for that. So, in the absence of a provision in the Variola for the rights and liabilities of a subscriber prized who is unable to tender security, the Courts have to decide the same on grounds of equity or commonsense. Courts should not be driven to adopt such a course when the same could be avoided by liquidation. Two different views were expressed by their Lordships in a case that went up before them. I am referring to the case reported in 10 T. L. J. 263. His Lordship Sesha Aiyar said "the foreman may if he chooses oblige the prized subscriber by giving him the balance prize amount and that the foreman of a running chitty is not bound in law, to pay the prized subscriber who fails to furnish security the balance left in the prize amount after deducting the amount due on account of future subscriptions." The other judge took a different view. The other Judge His Lordship Pappu Pillai said "A prized subscriber in a running chitty who fails to furnish security is entitled in law to recover from the foreman the balance of the prize amount after deducting the subscriptions due on account of future instalments."

Although that case had to be decided on some other grounds, the fact remains that the two judges took different views on this question. That was the first ruling that was passed after the Chitties Act was passed.

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Mr. V. N. Padmanabha Pillai: May I know the practice now obtaining?

Mr. G. Narayana Aiyar: We are not concerned with the practice which may not be consistent throughout. We are dealing with a statute which should be very definite. When framing a statute we should see that it is specific and exhaustive. You should not drive the courts to draw their own conclusions or their own inferences.

The next case that came up is reported in 13 T. L. J. 28 where the same question had to be decided. Their Lordships held "The failure of the prized subscriber to give security for the future conduct of the chitty can entitle the foreman to retain in his possession the amount for which the subscriber was bound to give security but not the excess over it—we do not see how the foreman's liability will be enhanced or how the other subscribers will be prejudiced if the foreman pays over to the prized subscriber the amount which really belongs to him. The foreman is a debtor to that extent. The amount which he can withhold must be equal to the possible damage" X T. L. J. 263 was referred to in that case. In that case there was the further direction that the foreman was to pay interest on the excess amount. That position is not in consonance with the position taken in the case quoted in 10 T. L. J. 263. Again the same question came up for decision in another case reported in 17 T. L. J. 870. Their Lordships held "No doubt a prized subscriber is entitled if he so chooses to call upon the foreman to retain in his hands such portion of the prize amount as may suffice to cover the future subscriptions of the chitty and to pay him the balance. But the initiative in the matter should be taken by the subscriber. It is only after he informs the foreman that he elects that course that the foreman can be held liable for interest." The dictum laid down in 17 T. L. J. 870 cannot be said to be in consonance with what was laid down in 10 T.L.J. and XIII T. L. J. Although the principle in the XIII T. L. J. was accepted, a further stipulation was thought necessary. It was held that the initiative in the matter should be taken by the subscriber. It is only after he informs the foreman that he elects that course that the foreman can be held liable to pay the excess in his hands and becomes liable for the interest. So, that does not in terms, agree with 13 T.L.J. Again another case came up on the same subject and the decision is reported in 18 T. L. J. 715. "The foreman is not bound on his own initiative to pay the subscriber the difference between the prize amount and the amount of future subscriptions due. His duty is to pay the prize amount when the security is furnished for future subscriptions. It is for the subscriber if he is

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[Mr. G. Narayana Aiyar]

unable to furnish security to intimate to the foreman his willlngness to have the prize amount split up and to consent to the foreman keeping the amount necessary to meet the claim for future subscriptions and make a demand of the balance. The subscriber should state and prove that special case. Their Lordships referred to the XVII T. L. J. case as well as an unreported case *i. e.* S. A. 493 of 101.

So, four different views were taken by the judges of the Honourable High Court so far as this position is concerned. So it is a matter for controversy. To give room for controversies when you pass a statute, is not sound legislation. As I said before, a statutory enactment ought to be exhaustive, definite and clear. We should not depend upon High Court judges to look to precedents. It may be seen that although originally all chitty transactions were for mutual credit and benefit, later on they became one man's business although others may be interested in it. It usually happens as may be seen from the report of the Chitty Committee, that some foremen place insurmountable obstacles in the way of a subscriber getting the prized amount. I may quote from page 30 of the Committee's report. "Some foremen place insurmountable obstacles in the way of the subscriber getting the prize money by not approving of any security that may be offered. The subscriber who could have realised better interest by investing it elsewhere is made to suffer..... The prized subscriber is often at the mercy of the unscrupulous foreman," A foreman might tell a subscriber who is willing to tender a security, "this security is not sufficient" if the foreman is badly inclined and then refuse to accept, or to get over the difficulty if the subscriber says that he may be paid the excess he can say. "I shall not give you any amount unless security is given as per section 19." Supposing the subscriber wants to use the money urgently for a marriage or for building purposes or for education purposes which has to be spent immediately. Section 19 provides in sub clause (1) "The foreman shall on the prized subscriber furnishing sufficient security for the payment of future subscriptions be bound to pay him the prize amount and shall be entitled ....." So payment of prize amounts depends upon the tender and furnishing of sufficient security. No other alternative course is suggested in the section. Taking advantage of this statutory provision he can put off the payment. Then the subscriber will be put to serious difficulties. To get over all these difficulties it is better that we be on the safer side and have this amendment which is quite harmless. It does not give any undue advantage to the subscriber or foreman. The amendment is: "If the subscriber

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is unable to furnish sufficient security, the prized subscriber shall intimate to the foreman his willingness etc." I simply follow here what Their Lordships have laid down. Even at the time such a demand is made, there may be circumstances under which he will be able to tender security only later on. I have provided the necessary safeguards to meet this contingency also.

Mr. V. N. Padmanabha Pillai: Seconded the amendment.

Mr. N. Narayana Kurup: I oppose the amendment. The amendment is as voluminous as the Act itself. My friend has quoted certain decisions of our High Court which are very old. If my friend had been vigilant enough to go through the later decisions of the High Court, these amendments would never have been brought forward by him. Whether scrupulous or unscrupulous the foreman pays the excess of the prized amount after deducting the future instalments if the subscriber issues a registered notice to that effect. That is the common practice now. There is ruling to that effect and that is the principle which is generally accepted by every foreman and subscriber. If we are to give details in a statute there will be no end. Therefore I oppose the amendment on the ground that this amendment is a superfluity and unnecessary.

Mr. G. Narayana Aiyar: The honourable member referred to the rulings made recently. May I know the number of the volume of the report?

Mr. N. Narayana Kurup: In any report in which chitty cases have been reported from 1116 onwards.

Mr. K. G. Kunjukrishna Pillai: I oppose the amendment. My object in speaking at this stage is to give an explanation, and for the purpose of shortening discussion on the matter. The Section says: "The foreman shall, on the prized subscriber furnishing sufficient security for the payment of future subscriptions, be bound to pay him the prize amount." Therefore the security is intended only for future subscriptions. My honourable friend who has taken great pains was asking what was the position if a chitty is bid, say on the 19th instalment and there are only five more future instalments. I will concretise in this way.

Mr. G. Narayana Aiyar: May I know whether the provision in Section 17 is similar to Section 19? These decisions which I quoted were on the 17th Section.

Mr. K. G. Kunjukrishna Pillai: But let me first explain my position. At the bidding, say, I get Rs. 500 and I owe Rs. 250 for further subscriptions. The foreman says: "You must pay security for this Rs. 250? Then I can tell him, "You take my

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[Mr. K. G. Kunjukrishna Pillai]

Rs. 250 and use it as the security. I am unable to furnish a property as security, but take this Rs. 250 and be finished with the business." Under which ruling is this prevented ? Under which ruling can the foreman say that he will not accept it as sufficient security ?

Mr. G. Narayana Aiyar : Can the prized subscriber claim any interest on the money which is due to him ?

Mr. K. G. Kunjukrishna Pillai : You give a security. Are you entitled to interest on any security that you furnish ? What is the difference, whether you make a cash security or a property security ? You will always have to forego the interest. Supposing you give property security. Are you entitled to interest ? You may agree with the foreman that the money may be deposited in Anchal Saving Bank so that you may get interest on it. But what I am saying is that the foreman is not bound to pay you the interest on your security. Section 19 is clear, certain and definite, that if the money is to be paid to him, he is bound to give that money.

My honourable friend has been very kind in giving us the gist of the rulings which he quoted. My conclusion is this. Except in one ruling, the conclusion of the honourable judges in all the other rulings is consistent. One judge alone says that the foreman is not bound to give back the money ; all the others state that he is bound. How he should give it, and in what form he should give it, all these things are not for this House to concern itself with. So I would submit that in spite of his very learned discussion my friend was creating a hurdle. He first created the hurdle and then tried to get over it. There is no hurdle in the Act. Therefore, in order to shorten the discussion, I may make it clear that the Section is clear that the foreman can, at no moment, say 'I shall not pay' provided the security is furnished.

Mr. T. M. Chidambarathanu Pillai : In this Section it is stated that for future conduct of the chitty security is to be furnished. The question of what must be the duty of the subscriber for the payment of money by the foreman to the subscriber does not arise. Even if it is a provision that the money should be immediately paid without asking by the foreman, even then it is for a court to decide. It does not stand to reason why an amendment should be made in the matter. "For the future conduct of the chitties, the security has to be furnished." No question of a dispute arises, no question of a complication arises in this matter. If the subscriber does not move in the matter, he must take the consequences.

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Mr. G. Narayana Aiyar: Sir, I wish to add a word by way of explanation. There are two parts in my amendment to this Section. If a subscriber expresses his intention that he must get the balance after allowing the foreman to retain with him the amount necessary for paying the future instalments he shall be paid accordingly. The amendment also directs the foreman to invest the money left with him in some savings bank or approved bank so that the subscriber may get the benefit of interest. All that I would suggest now is that this is an aspect which deserves consideration and that the amendment is absolutely necessary.

The amendment was put to vote and lost.

The question that clauses 20 and 21 do stand part of the Bill was put and carried.

The clauses were added to the Bill.

Clause 22.

Mr. Pual A. Thaliath: Sir, I move that in clause 22 after the words "may be audited by" the words "such officer" be omitted and the words "any auditor" be inserted. My object for this amendment is to see that any auditor who is holding service under Government also may do this work.

Mr. N. Ramakrishna Pillai: Sir, I oppose the amendment. I do not see the need for such an amendment at all. That any officer can be empowered by Government to audit is the only idea contained in that clause. Any officer means a person who holds an office and auditors are also officers. Therefore I do not see any reason why that expression "officer" should be replaced by "auditor."

The amendment was put to vote and lost.

The question that clause 22 do stand part of the Bill was put and carried.

The clause was added to the Bill.

The question that clauses 23 to 27 do stand part of the Bill, was put and carried.

The clauses were added to the Bill.

Clause 28.

Mr. K. S. Joseph: Sir, I move to "omit Section 28."

Mr. N. Ramakrishna Pillai: Sir, on a point of order. The motion is to omit the entire Section. Under the Rules that amendment is out of order.

Mr. K. S. Joseph: I moved it as an amendment and it has been included here.

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Mr. N. Ramakrishna Pillai: Standing Order 25 says that an amendment must be relevant to and within the scope of the Bill. Any amendment which has the effect of a negative vote cannot be moved at this stage of discussion. But at the time of the passing of the Bill clause by clause, such a motion can be made. That is also the convention adopted in this House.

Chairman: That ruling applies to clause 28.

Mr. K. S. Joseph: The honourable Legal Remembrancer refers to a modification of a clause in such a way as to give the meaning just the opposite of what was intended by the original clause. It does not refer to a motion like mine where I say omit the clause. The effect of such an amendment would be just the opposite of what was meant by the clause suggested by the Select Committee. But that is not the intention of my amendment. My amendment is that the whole clause be omitted. There is nothing in common between the amendment referred to and *my amendment*.

Mr. K. G. Kunjukrishna Pillai: Sir, there is a more recent ruling on the matter. (reads)

After referring to the several rulings, the President ruled the amendment out of order.

Chairman: I rule the amendment of Mr. Joseph out of order.

Mr. K. S. Joseph: Then I would oppose that clause at the proper time.

The question that clause 28 do stand part of the Bill was put.

Mr. K. S. Joseph: Sir I oppose the incorporation of cluase 28.

I do not at all see the point in including this clause. Say a certain subscriber after the 3rd instalment commits default and another is substituted in his place. After say the 15th instalment, if the substituted subscriber bids, he has to be paid. The provision here says that moneys subscribed for the first three instalments by the defaulting subscriber ought to be kept in an approved bank. Let me ask in all earnestness, why should that be done? If the foreman has no right to keep that, why should it not be given straight away, to the subscriber. What is the sense in having such a clause, I do not quite see. The man who has failed to pay properly is a defaulter and continues to be so till he effects payment.

Mr. K. A. Raman Pillai: The honourable member would please refer to clause 27 which says that only after termination of the chitty money is payable.

Mr. K. S. Joseph: I am coming to that point. The Section says definitely that the foreman has a right to keep the amount till the end of the chitty. In other words, a subscriber who promissed to be one such and failed to subscribe has been penalised. In the light of that I ask in all earnestness why was this clause inserted here?

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I could understand a provision being made to the effect that as soon as somebody else becomes a substitute, he is to be paid what is due according to the variola. The provision says it must be deposited in an approved bank. This position looks rather meaningless. Of course it may be advantageous to Government. Apart from that I do not see any other advantage. On that ground, I oppose the incorporation of the clause.

Mr. K. A. Raman Pillai: Sir, I do not at all agree to the remarks of the honourable member who preceded me. Anyway I oppose his amendment.

Mr. T. M. Chidambarathanu Pillai: Sir, if a discussion is allowed, I wish to add a few words. The scheme of the Chitty Act is to see that no money of the subscriber is to be handled by the foreman unnecessarily.

He is given a decent remuneration for the conduct of the chitty—3 or 4 per cent. commission on the capital involved in the scheme.

Mr. K. S. Joseph: Does it not occur to the honourable member that it is as a penalty that it is provided that the defaulter subscriber need be paid at the termination of the chitty ?

Mr. T. M. Chidambarathanu Pillai: The Section says that if a subscriber makes a default thereby making the chitty scheme unworkable, then a substitute is necessary. In such cases the defaulter subscriber need be given money only at the termination of the chitty even as a penalty. But that money should not be allowed to remain in the hands of the foreman for his own use. That money will become available to the defaulter subscriber only at the termination of the chitty. Therefore that money must be kept under proper custody. That is provided for to safeguard the interest of the defaulter subscriber so that he may get the money immediately after the termination of the chitty. But if the money is with the foreman, a reasonable interest should be allowed to the subscriber. So it is to safeguard the successful running of the chitty that this provision is introduced.

Mr. K. S. Joseph: May I know how it will defeat the successful running of the chitty ?

Mr. T. M. Chidambarathanu Pillai: However unbiased or honest he may be, the foreman may use the money if it is in his own hands which will naturally affect the smooth running of the chitty. But if it is deposited in a bank he will see that it is paid to the defaulter subscriber immediatly after termination.

Mr. K. S. Joseph: What is the harm if the money is paid to the defaulter subscriber then and there ?

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Mr. T. M. Chidambarathanu Pillai: The amount available can be known only at the termination of the chitty. Some people allow Veethapalisa while others do not allow Veethapalisa. The amount due to the defaulter subscriber can be ascertained only at the termination of the chitty. Otherwise sometimes the subscriber may be paid more and at other times less. As the exact amount cannot be ascertained, that money must be deposited in a bank. More over there will be an inclination to discontinue in the the middle of the chitties if paid up subscriptions are paid as and when they make a default.

Mr. K. S. Joseph: It can be ascertained at any time.

The amendment was put to vote and lost.

The question that clause 28 do stand part of the Bill was put and carried.

The clause was added to the Bill.

Clauses 29 to 31.

The question that clauses 29 to 31 do stand part of the Bill was put and carried.

The clauses were added to the Bill.

Clause 32.

Mr. G. Narayana Aiyar: Sir, I move.

"Omit sub-clause (2) and substitute the following as sub-clauses 2 (*a*) and 2 (*b*):—

"2 (*a*) If in a suit instituted by the foreman for consolidated payment of future subscriptions from the defaulting prized subscribers the defendant who admits the claim pays into court on or before the date of the first hearing or any date fixed by the court on the application of the defendant for deposit, the arrears of subscriptions due till date together with interest thereon at the rate provided for in the variola or at 12 per cent. per annum whichever is lower and the costs of the suit for payment to the plaintiff, then, notwithstanding any contract to the contrary, the court shall pass a decree directing the defendant to deposit in court for payment to the plaintiff, the future subscriptions on or before the dates, on which they fall due and making him liable for consolidated payment of all the future subscriptions with interest thereon in case of default to deposit in court any one instalment on or before the due date and allowing the plaintiff in each case of such default to realise in execution all the future subscriptions and interest thereon less the amount, if any, already deposited by the defendant."

2. "(*b*) If in a suit instituted by the foreman for consolidated payment of the future subscriptions from a defaulting prized subscriber, the defendant who does not admit the whole claim pays into court, before the issues are framed, the arrears of subscriptions till that date as admitted by him together with interest thereon at the rate provided for in the variola or at 12 per cent. per annum whichever is lower and for payment to the plaintiff, then notwithstanding any contract to the contrary, the court shall pass a decree directing the defendant to deposit in court, for payment to the plaintiff

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the future subscriptions on or before the dates, on which they fall due and making him liable for consolidated payment of all the future subscriptions with interest thereon in case of default to deposit in court any one instalment on or before the due date and allowing the plaintiff in case of such default to realize in execution all the future subscriptions and interest thereon less the amount, if any, already deposited by the defendant. The amount in dispute as well as cost of the suit shall be paid by the defendant as per the terms of the decree that may be passed in the case."

Sir, this clause which does not find a place in the original Act is newly introduced, to relieve the defaulting subscriber from the penalty that he may have to undergo as per the provisions of the Act. I may be permitted to say that as it is, if the foreman is wrongly inclined, he may claim a sum not legally due because if the subscriber wants to get the benefit he has to deposit an amount legally due as claimed by the foreman. Now what does sub-clause (2) say? "If in a suit instituted by a foreman for consolidated payment of the future subscriptions from a defaulting prized subscriber, the defendant pays into court on or before the date to which the suit is posted for evidence, the arrears of subscriptions....."The expression "arrears of subscriptions" has got two interpretations. The foreman may have discharged part of the claim made by the plaintiff. As it is, he will have to pay over again if a man chooses to claim like that. That can never be the intention of the Legislature. If a party is asked to pay what is not legally due, that is very hard. Being a new provision I have amended it in such a manner as to give scope for two sets of people. In cases where the amount claimed is admitted by the defendant he may deposit the amount. In cases where the amount is disputed by the defendant he may deposit the amount admitted and leave the other portion as a matter of controversy to be decided by the court. If there is not such a provision there may be some unscrupulous foreman who may take undue advantage of the provision of the Act and compel the subscriber to pay more than what is legally due. To avoid such a contingency I have provided for two sets of cases. He can take advantage of either of the cases as it suits him. I hope this amendment will be acceptable to the House.

Mr. K. G. Narayana Panickar: I support the amendment.

Mr. Joseph Vithayathil: I oppose the amendent. The expression "arrears of subscriptions" in the sub-clause evidently means the actual arrears of subscriptions. It is not arrears of subscriptions as claimed by the plaintiff or as contended by the defendant.

Mr. K. G. Narayana Panicker: May I know the interpretation that is capable of as it is worded in the Section.

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Mr. Joseph Vithayathil: "Arrears of subscription" must mean only the actual arrears of subscription. When we say "arrears of subscription", it naturally means the sum actually due.

Mr. V. N. Padmanabha Pillai: May I know who is to decide that?

Mr. Joseph Vithayathil: The court must decide it. According to my friend if there is dispute between the parties regarding the arrears of subscriptions the defendant need deposit only the amount admitted by him and he will not lose the benefits of the clause even if it is subsequently found that he has not deposited the whole amount provided he deposits the balance amount within the time allowed by the court. Such a provision will throw the door open for the practice of fraud. The defendant will be induced to admit only a small amount and protract the trial of the suit. It is to prevent such a contingency that it is provided that the subscriber should deposit the actual arrears if he should get the concession granted by the clause. He will have to prove that as a matter of fact, the only amount admitted by him is the actual arrears. He cannot have it both ways. He cannot be allowed to gain time by raising a false contention without taking the risk of forfeiting the concession granted by the clause. I do not think it necessary that the clause should be amended in the manner suggested.

Mr. K. A. Raman Pillai: I also oppose the amendment. Unscrupulous defaulter subscribers will deposit only nominal amounts for the purpose of reducing the amount. So I oppose the amount.

The amendment was put to vote and lost.

Mr. K. S. Joseph: I move that sub-clauses (4) and (5) of clause 32 be deleted. I have a particular object in moving for the deletion of these sub-clauses. Those who have had any experience in conducting chitties will have understood that if at all subscriptions in a lump are relaised they are realised only towards the end of the chitty. That is particularly the time when a number of subscribers commit default. By the end of the chitty it will be found that most of the foremen find it difficult to get collections from the subscribers. If at that particular time any amount that is legally due to the foremen from the subscribers by way of arrears they have defaulted is taken away, it will not help the foremen but add only to their difficulties. Normally, towards the end of the chitty it is found that many subscribers default two or three instalments. Therefore all except those very rich people who can command money from other sources will find it difficult to pay the money regularly. If at such a time the amounts that ought to go to his pocket by way of arrears of subscriptions are to

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be deposited somewhere else it will work untold hardship on the foremen. Instead of helping to conduct the chitty properly it will add confusion. It will also mean that only big capitalists can conduct chitties. Honest men who can give proper security for chitties who cannot command extra money at beck and call will find it absolutely difficult, if not impossible, to conduct chitties satisfactorily. When he has the need of such money to help him to pay the subscribers he should have it. Therefore I am definitely of the opinion that sub-clause (4) ought to be deleted and if sub-clause (4) is to be deleted naturally sub-clause (5) also goes.

I would like to hear the Official Bench.

The amendment fell through for want of a seconder.

Mr. G. Narayana Aiyar : I am not moving any of my further amendments,

The question that clauses 32 to 34 do stand part of the Bill was put to vote and carried.

Clauses 32 to 34 were added to the Bill.

Clause 35.

Mr. K. S. Joseph : Sir, I move that in sub-clause (2), at the end the words "or of the variola" be added.

It often happens that subscribers come to the foreman and take small loans on the security of their paid up subscriptions. If therefore, the variola provides for transfer of such subscribers' right in the chitty without the previous knowledge of the foreman, it will not be recognised. I will explain myself a little further. Very often the foremen provide in the variola a clause that any transfer of the rights of a subscriber ought to be done with the consent of the foreman. The necessity for including such a clause in the variola is that subscribers often go to the foreman and take small loans on the security of their paid up subscriptions, and it is only fair that the foreman gives small loans on the paid up subscriptions. If a subscriber is allowed to transfer his rights in the chitty without the knowledge of the foreman, it would work hardship on the foreman. Therefore, I would suggest that the words "or of the variola" be added at the end of sub-clause (2) so that it may read : "The transfer was effected with a view to defeat the provisions of any law or of the variola." I commend that amendment to the honourable House.

Mr. V. N. Padmanabha Pillai : Sir, I second it.

Mr. N. Ramakrishna Pillai : Sir, I oppose the amendment on this ground. The scheme of the Act is not to allow private arrangements between the foreman and the subscribers behind the back of the other subscribers. The chitty business is a co-operative business. If the foreman enters into a private transaction with the subscriber.....

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Mr. K. S. Joseph : It is not a private arrangement.

Mr. N. Ramakrishna Pillai : It is exactly what happens. The foreman is a trustee for all the moneys for the benefit of all the subscribers. He cannot give such loans. If he does so it will be wrong. The chitty amount is one which the foreman has no right to tamper with. If he advances any amount which is not his own, he will be answerable to the subscribers. I therefore oppose the amendment.

Mr. K. S. Joseph : Sir, a word of explanation seems necessary. Every subscriber who subscribes to the chitty and has not bid it, is the owner of the amount of the money and if he comes and asks for the money it is only fair that he gives that amount. Let my honourable friend be not under the impression that it is some extra help. The foreman does not lend.

Mr. G. Revi Varma (*Trivandrum and Nedumangad cum Chiravinkil*) : Do the transactions form part of the chitty affair ?

Mr. K. S. Joseph : Yes, if the clause is added to the variola.

The question that in clause 35, sub clause (2), the words "or of the variola" be added was put to vote and declared lost.

The question that clause 35 do stand part of the Bill was put to vote and carried.

Clause 35 was added to the Bill.

Clauses 36 to 45.

Mr. G. Narayana Aiyar : Sir, I withdraw all the other amendments.

The question that clauses 36 to 45 do stand part of the Bill was put to vote and carried.

Clauses 36 to 45 were added to the Bill.

Clauses 46 to 73.

Mr. Paul A. Thaliath : Sir, I do not wish to press the amendments.

The question that clauses 46 to 73 do stand part of the Bill was put to vote and carried.

Clauses 46 to 73 were added to the Bill.

The question that the preamble and title do stand part of the Bill was put to vote and carried.

The preamble and title were added to the Bill.

Mr. N. Ramakrishna Pillai : Sir, I move that the Bill be passed.

Mr. K. G. Kunjukrishna Pillai : I second it.

The question that the Bill be passed was put to vote and carried.

The Bill was passed.

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Chairman : The House will now consider the motion by Mr. K. R. Narayana Aiyar.

Mr. K. R. Narayana Aiyar : Sir, I move the following motion :

"That the situation in regard to the Bunchy Top disease of bananas in the State and the necessary measures to be taken to bring it immediately under control be considered."

(At this stage, the Dewan-President resumed the Chair.)

Two days ago, I had the privilege of explaining to the honourable members of the other House the seriousness of the situation that has been brought about by the incidence and prevalence of a disease known as the Bunchy Top disease of bananas. Unfortunately, the disease was imported into the State for the first time by a citizen of Kottayam who happened to live in Ceylon for a few years and who, unawares, brought some suckers from Ceylon and planted them in his garden.

Mr. M. Govindan : May I know the meaning of the expression 'Bunchy Top'?

Mr. K. R. Narayana Aiyar : Sir, if only the honourable member would patiently listen to what I say, the whole thing would become extremely clear.

Mr. M. Govindan : I only want the linguistic meaning.

Mr. K. R. Narayana Aiyar : The disease was imported into Kottayam town some three years ago. The symptoms of the disease are that the plantains always get stunted in growth. Then leaves become progressively smaller in size and gradually get clustered together and stand erect and have the appearance of a bunch as will be evident to the honourable member from the posters that have been distributed to them this morning. The result is that it is called 'the Bunchy' top disease. All the varieties of the plantains are susceptible to the disease and the disease is seen to affect the plantains at all stages of their growth.

I shall now explain how this disease is caused. It is caused by a virus, an ultramicroscopic principle, which is supposed to have life on account of the fact that it is able to reproduce itself rapidly and multiply under favourable conditions in the host plant. This disease is carried from the infected plantain to the healthy one by a species of small lice, winged creatures. They bite the infected plants and suck the juice and fly off to the next plant and bite it. Thus the disease is spread, very much like the process by which the mosquito carries the malarial parasite from the infected person to the healthy person.

The disease was brought to the notice of the Department towards the latter half of 1119. By that time, unfortunately, about 50 to 100 square miles had been infected. This Department in

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[Mr. K. R. Narayana Aiyar.]

collaboration with the Research Department set out to take measures to get the disease under control. Fourty fieldmen were appointed in the middle of last year to tour round and advise people to control the disease. The disease was however getting the upper hand. The remedy suggested was to segregate the infected plantains, cut them out and bury them deep in the soil. The officers had to visit these gardens not once, but several times to impress upon the people the seriousness of the disease and to advise them to adopt the measures. The Agricultural Inspector of the place was divested of his normal work and appointed Special Officer. A programme of work was chalked out, and with the co-operation of the Police it was brought to the notice of the people that infected plantains should not be transported from the affected area to the non-affected area. They toured round the whole area and towards the close of Idavam destroyed not less than 2½ lakhs of diseased plantains. In spite of these measures, the disease has not been brought under control. With Kottayam as its centre, the disease has now spread in the east up to Manimala, to Changanacherry in the south, to Kumarakom in the west and to Ettumanoor in the north.

The importance of the plantain in the life of the people of the State can hardly be over-emphasised. It enters into the daily dietory of the people. It is closely interlinked with the economy of the people as a whole.

This is not a new disease. The disease occurred in the Fiji Islands about 1890 and scientists all over the world devoted a considerable amount of attention to the investigation of the disease. It has not been possible to find a cure yet. The only method is to segregate the infected area and destroy all the affected plants. In the Fiji Islands, hundreds of thousands of acres of plantains were wiped out. The disease occurred also in Australia, and in Ceylon. The Australian Government took very prompt and drastic measures to control the disease in New South Wales, Queensland and various other areas there. The seriousness of the disease was discussed threadbare in the Applied Biology Committee of the Department of Research which consists of experts who are qualified to pronounce an opinion on this subject. That Committee resolved that the only method was to declare the affected area as a quarantine area or as an infected area and then cut out all the plantains both healthy and diseased, and put a ring around the area which has been affected in order that the disease may not spread into the wider regions of the country and wipe out the plantation as a whole. These resolutions were also duly placed before the Council of Research of the University and the Council has accepted them unanimously.

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The one difficulty in identifying the disease is that its inculation period varies between 3 to 10 weeks with the result that the officers who go round and inspect the plants with the naked eye and find for all practical purpose no disease in the plant, during their second visit after a month or so, the very same plantains show signs of disease. In view to the great importance of the question, I hope the honourable members of this House will lend their support to the measures that have been recommended by the technical and expert committee consisting of the members of the Applied Biology Committee and duly approved by the Council of Research.

Mr. G. Narayana Aiyar: Have the Government prohibited the export of plantains in Travancore?

Mr. K. R. Narayana Aiyar: That question does not arise. It has been clearly indicated that if this particular disease which has already spread over two hundred square miles is not checked it would enter into other areas as well especially the jungle. If this happens the whole plantain industry in the State would be wiped out as it happened in the Fiji Islands.

President: Order, order. Before asking honourable members for their co-operation in the matter, there are just two or three points which I should indicate to you by way of supplementing what has fallen from the Director of Agriculture. The Director of Agriculture referred to the havoc played by this disease in Fiji Islands but he did not mention what is important for the honourable members of this House to know, namely, that on account of certain delay in taking the necessary legislative and other steps, the plantain industry in Fiji was practically destroyed for 30 to 40 years. In other words there were no plantains in Fiji at all. The Ceylon Government have suffered very much from the same disease in respect of the plantain crop, and the reports of the Ceylon Government would show that they are also in a very difficult position. It is unfortunate that an enterprising gentleman introduced this disease by bringing suckers from Ceylon. That is the present information available to this Government. The disease was imported from Ceylon and has spread very fast. The real trouble, as has been pointed out by the Director of Agriculture, is that if you find out a particular plant which has been afflicted by this disease and destroy that plant, thinking that the other adult plants which are bearing fruits or are promising to bear fruit may be saved from this infection, by the time,—the period of incubation takes about three to ten weeks—the Agricultural Inspector comes round this place the plant that was free from infection is also seen to be affected. The real trouble is not confined to this aspect alone. Already the disease has spread to the hill localities and the valleys,

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[President.]

Once it spreads into the hills, into the very large hill tracts which are much more difficult of access than the other tracts, it will be practically impossible to eradicate this disease. Subject therefore to what any honourable member may have to say, this Government would ask for the full co-operation of the public in this matter for such legislative and other measures as might be undertaken by this Government in order to prevent the spread of the disease and to check it, if possible. Elsewhere, I have stated that where for instance you have to destroy trees which have actually fruit on them, then a certain amount of compensation might be admissible. That matter will be very carefully considered by Government because Government do not want to penalise people unless in the interests of the public at large and for paramount reasons.

Mr. N. Narayana Kurup: സ്വകാര്യമായിട്ടുള്ള വാഴകൾ കൂടി കായും മറ്റും ഉണ്ടാകുമോ ?

Mr. K. R. Narayana Aiyar: ഇല്ല.

Mr. T. W. U. Park: I should like to ask one question. Has D. D. T. powder been tried as an insecticide on a large scale?

Mr. K. R. Narayana Aiyar: No, Sir. It is very costly.

President: As a matter of fact, we have been attempting to get it. Has Mr. Park got any D. D. T?

Mr. T. W. U. Park: I asked the Director of Agriculture whether he could give me a quarter pound of it.

President: We have been attempting to get both penicillin and D. D. T. and have been making strenuous efforts to obtain both these drugs which they say have been pronounced to be of great use during the war. Penicillin has been said to be of great use in saving human lives while the other drug has been efficacious not only in regard to human lives but in plant and animal lives also. But no stock has come out from the military secret list and is not available to us. Very probably, as soon as D. D. T. becomes available to the country—at all events for the civilian population—the experiment with D. D. T. might be made. They say that practically every insect pest succumbs to D. D. T. I take it that this is one of the aphrides—the Zoological name for the insect that is producing this. It is possible that one of the aphrides will be affected by the D. D. T. Government are keeping that in mind and I may say that at this moment, if these measures are considered necessary, I propose to write to the Central Government asking them at least for this purpose and in view to the great interests involved, to spare us some D. D. T. which we shall keep secret and not use excepting for this purpose.

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Mr. T. W. U. Park : May I suggest that the Director of Agriculture gets at least eight ounces from the Director of Public Health who has a small quantity to try the experiment.

Mr. K. R. Narayana Aiyar : I have no objection to try it, but I believe it will be difficult because the worm lives in the inner recesses of the plantain clefts. Even if you spray I am afraid it will not have any effect.

Mr. K. G. Narayana Panicker : ഈ ദീനം പിടിച്ച വാഴകളുടെ കുലയും ഇലയും മറ്റു സ്ഥലങ്ങളിൽ കൊണ്ടുപോയാൽ അതു കൊണ്ടിറക്കുന്ന സ്ഥലങ്ങളിൽ ദീനം പകരുമോ?

Mr. K. R. Narayana Aiyar : അങ്ങനെ അവയുടെ കൂടെ ഉണ്ടെങ്കിൽ, അവ മറ്റു വാഴകളെ കടിച്ച് ദീനം പകരുന്നതിന് ഇടയുണ്ട്.

President : This particular '*poochi*' gets into the stem and bores into it and also into the flower portion.

Mr. N. Narayana Kurup : ദീനം പിടിച്ചതിൽ കുല ഉണ്ടാകുകയില്ലെന്നു പറഞ്ഞു, ഇപ്പോൾ പറയുന്നു ആ കുലയും കൊണ്ടുപോയാൽ ദീനം പകരുമെന്ന്. (*Laughter*)

Mr. K. R. Narayana Aiyar : I will explain to the honourable member. As I said in my speech plantain is susceptible to the disease at all stages so that if there is a plantain there, the bunch of which is half-ripe, it may get infected with the disease.

Mr. K. G. Narayana Panicker : If transport of plantains takes place from Kottayam to Alleppey, Changanacherry etc., probably this disease will be spreading and measures ought to be taken to check it.

Mr. K. R. Narayana Aiyar : As I indicated, the entire area has to be on quarantine and the whole thing has to be controlled.

Mr. M. Govindan : Sir, I congratulate the Government on the action that is proposed to be taken by them for bringing this disastrous disease to an end. My surprise is that it took so much time for that enterprising cultivator to indicate the fact to the authorities and that 200 acres have already been affected before effective action could be taken.

President : 200 square miles.

Mr. M. Govindan : Yes, Sir. 200 square miles. I can assure the Government on behalf of the members here that we shall lend them our whole hearted support to every effective measure that would be recommended by the Director of Agriculture and the Government for preventing this disastrous disease. I am very fond of plantains (*Laughter*), and I am sure many of my friends know

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[Mr. M. Govindan.]

that it is a wholesome food. My fear is that like the cocoanut disease, this may continue for long. Let us destroy all the plantain trees affected by this disease and let us get rid of this infection once and for all from Travancore.

Mr. A. N. Sathyanesan : കർഷകപ്രധാനമായ ഈ രാജ്യത്ത്, കർഷകരെ സഹായിക്കുന്നതിനു — കർഷക ജനങ്ങളുടെ സാമ്പത്തിക സ്ഥിതിയെ ഉദ്ധരിക്കത്തക്ക വസ്തുതകൾ തെളിഞ്ഞുകണ്ടാൽ അവയെ തടയുന്നതിനു — ഡിപ്പാർട്ടുമെൻറ് ചെയ്യുന്ന ഏതു പ്രവർത്തനവും ജനതയുടെയും ജനപ്രതിനിധികളുടെയും ഗൗരവാവഹമായ ശ്രദ്ധയെ ആകർഷിക്കത്തക്കവയാണ്. തിരുവിതാംകൂറിൽ വാഴക്കൃഷി സർവസാധാരണമായി വളരെ പ്രാധാന്യമുള്ള കന്നല്ലെന്ന് ചിലർ ധരിച്ചേക്കാമെങ്കിലും പൊതുവേ നോക്കുന്നപക്ഷം ൪ കോടി രൂപായോളം ആണ്ടിൽ ആവഴി ആർജ്ജിച്ച് പൊതുജനങ്ങൾക്കു ജീവിതാവശ്യങ്ങൾ നേടിക്കഴിയുന്ന ഒരു പ്രധാനപ്പെട്ട തൊഴിലാണെന്ന് സൂക്ഷ്മനേത്രഷകർക്ക് മനസ്സിലാക്കാൻ കഴിയും. ആ സ്ഥിതിക്ക് ഇത്ര പ്രധാനപ്പെട്ട വിഷയത്തെ സംബന്ധിച്ച് ജനങ്ങളുടെ അനേഷണബുദ്ധി ഡിപ്പാർട്ടുമെൻറിനെ ആകർഷിക്കുന്നതിനു മുമ്പുതന്നെ ജനങ്ങളുടെ രക്ഷ സർവപ്രധാനമായി കരുതുന്ന ഗവണ്മെൻറും അതിലേക്ക് ചുമതലപ്പെട്ടിരിക്കുന്ന വകുപ്പുദ്യോഗസ്ഥന്മാരും വളരെ നേരത്തെ വാഴയുടെ രോഗം കണ്ടുപിടിച്ച് തടയാൻ ചെയ്തിട്ടുള്ള ശ്രമത്തെ എത്രയും അഭിനന്ദിക്കേണ്ടിയിരിക്കുന്നു. ഈ ശ്രമത്തിൽ പൊതുജനങ്ങളുടെയും പൊതുജന പ്രതിനിധികളുടേയും സൂക്ഷ്മവും കേന്ദ്രീകൃതവുമായിട്ടുള്ള സഹായങ്ങളും ഔത്സുക്യങ്ങളും ലഭിക്കുമെന്നു ഗവണ്മെൻറിനും ഡിപ്പാർട്ടുമെൻറ് മേലധികാരികൾക്കും ദൃഢമായി വിശ്വസിക്കാവുന്നതാണു.

NON-OFFICIAL LEGISLATIVE BUSINESS.

THE KAMMALA (VISWAKARMA) BILL.

Mr. M. Govindan : I move that the consideration of the Bill be continued.

Mr. K. A. Raman Pillai : I second it.

Mr. N. Velu Achary (*Co-opted*): സർ, ഈ സഭയുടെ ആലോചനക്കൊത്തിട്ടുള്ള ബില്ലിനെ സംബന്ധിച്ച് സമുദായത്തിൽനിന്നും ഒരു പെറ്റീഷൻ അവതരിപ്പിക്കാനായി എന്നെ ഏൽപ്പിച്ചിട്ടുണ്ട്. സ്റ്റാൻറിംഗ് ആഡർ നമ്പ. പ്രകാരം അതവതരിപ്പിക്കണമെന്നപേക്ഷിക്കുന്നു.

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